

MAR 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTOPHER CRUZ,

Petitioner - Appellant,

v.

GEORGE M. GALAZA, Warden; C. A.
TERHUNE,

Respondents - Appellees.

No. 05-56731

D.C. No. CV-99-11824-RGK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted March 3, 2008
Pasadena, California

Before: GOODWIN, SCHROEDER, and TALLMAN, Circuit Judges.

Christopher Cruz, a California state prisoner, appeals the denial of his 28 U.S.C. § 2254 petition alleging ineffective assistance of counsel. The state court concluded that his trial counsel's failure to interview witness and victim William

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Hutchinson was not deficient representation because there had been no showing that this was anything other than a reasonable tactical decision.

We must conclude that the record supports that conclusion, particularly in light of trial counsel's declaration before the district court explaining that Hutchinson had been hostile and uncooperative at the preliminary hearing and that counsel feared Hutchinson's testimony might have turned out to be damaging to Cruz. It was not an unreasonable application of federal law for the state court to hold that the facts failed to establish deficient representation. See 28 U.S.C. § 2254(d)(1); Strickland v. Washington, 466 U.S. 668, 687 (1984).

AFFIRMED.